

D-5389

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Public  
Grade Crossing over the Track of the  
CONCLUSIONS,  
Soo Line Railroad Company Between  
MEMORANDUM  
County Road F and McMenemy Road in  
Vadnais Heights.

FINDINGS OF FACT,  
RECOMMENDED ORDER AND

The above-entitled matter came on for hearing before Administrative  
Law  
Judge Richard C. Luis at 8:30 a.m. on May 28, 1985 in the Vadnais  
Heights City  
Hall.

Willard L. Converse, Esq., Peterson, Bell & Converse, 2100 American  
Bank  
Building, 101 East Fifth Street, St. Paul, Minnesota 55101, appeared on  
behalf  
of the Petitioner herein, the City of Vadnais Heights  
Respondent  
Soo Line Railroad Company ("Railroad") was represented by Michael M. Mullins,  
Esq., General Attorney, Box 530, Soo Line Building, Minneapolis,  
Minnesota  
55440. Ronald F. Mattson, Regulatory Affairs Manager, Minnesota  
Department of  
Transportation, 810 Transportation Building, St. Paul, Minnesota 55155,  
appeared on behalf of the staff of the Minnesota Department of  
Transportation.

The record in this matter closed with the receipt of a -final letter-  
brief  
on June 21, 1985.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and the  
Rules of Practice of the Public Utilities Commission, as applicable to  
the  
Minnesota Department of Transportation, and the Rules of the Office of  
Administrative Hearings, exceptions to this Report, if any, by any party  
adversely affected must be filed within 20 days of the mailing date  
hereof  
with Richard Braun, Commissioner of Transportation, 4th Floor, Transportation  
Building, St. Paul, Minnesota 55155. Exceptions must be SPECific and  
stated  
and numbered separately. Proposed Findings of Fact, Conclusions and  
Order

should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before the Commissioner may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the exceptions or reply filed with the Commissioner.

The Commissioner of Transportation will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commissioner may, at his own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commissioner as his final order.

#### STATEMENT OF ISSUE

Whether a public grade crossing should be established across the main line track of the Soo Line Railroad Company at a point midway between County Road F and McMenemy Road in Vadnais Heights.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. On March 19, 1985, the Vadnais Heights City Council unanimously passed the following resolution:

BE IT RESOLVED that the City of Vadnais Heights, staff and consultants, are hereby instructed to pursue the appeal of a new at-grade crossing of the Soo Line Railroad tracks at a location midway between the County Road F and McMenemy Road crossings. This crossing is needed to provide a second access/egress point for the 109 single-family homes planned in the Vadnais Heights South Oaks Addition. We understand that this appeal will be sought through a public hearing conducted under the auspices of the Commissioner of Transportation.

2. On April 26, 1985, a Notice of and Order for Hearing was served by mail on all interested parties.

3. The proposed railroad crossing is located in the Southeast Quarter of a mile-square Section in the northwest corner of the City of Vadnais Heights, bounded by Ramsey County Road F on the south, north Rice Street to the west, State Highway 96 on the north, and McMenemy Road on the east. The Southeast Quarter Section, and the Quarter Section to its immediate north, are currently undeveloped. The topography of that area consists of low, rolling hills, heavily wooded, with two wetlands (Sucker Lake and an unnamed wetland protected by the Minnesota Department of Natural Resources), sloping gradually to the south and west.

4. The west half of the Southeast Quarter Section described in the above Finding has been purchased by real estate developer Keith T. Harstad. A proposed plat for the area had been submitted to the City's Planning Commission at the time of the hearing. The development, Vacnais Heights Oaks, 2nd Addition (also known as "South Oaks Addition") lies both north and south of the main line track of the Soo Line Railroad, which track passes through the development on a diagonal, leaving approximately 2/3 of the land area north of the track and 1/3 of the area to the south.

5. The South Oaks Addition is divided by the Soo Line Track in a land-use sense as well as geographically. North of the track, the proposed plat is

designated for "R-2" (medium density) zoning, consisting of single family lots and two family townhouses (as called "twin homes"). The area south of the track is proposed for "R-3" zoning (high density residential, multi-family housing, such as condominium and rental apartment buildings). When fully developed, in approximately 2000, the South Oaks Addition is estimated to be home to over 700 people, with approximately 370 (53%) living in the medium density tract north of the Soo Line.

6. The main line track of the Soo Line Railroad runs on a straight line approximately 3,900 feet (3/4 mile), in a southwest to northeast direction, between County Road F and McMenemy Road. The proposed crossing would be located where Foothill Trail (a platted, but yet unbuilt street) crosses the track, midway (1,950 feet) between the County Road F and McMenemy Road crossings. Unlike the two existing crossings, which are at an approximately 60 degree - 120 degree angle across the roads, the Foothill Trail crossing is planned to be perpendicular (90 degrees).

7. Foothill Trail, if the crossing is built, will extend south to County Road F, thus providing a southern access to the proposed development. If the crossing is not built, the only access to the 2/3 of the South Oaks Addition lying north of the Soo Line would be to the northeast, where two roads, Meadowood Lane and an unnamed street 200 feet north of the McMenemy crossing, in addition to Foothill Trail, are proposed to provide access to McMenemy Road. The driving distance from the south end of the R-2 zone to the closest outlet on McMenemy Road is approximately one mile.

8. It is estimated that, when the proposed South Oaks Addition is fully developed, the 123 dwelling units lying north of the Soo Line track will generate approximately 1,200 vehicular trips per day. If the crossing is built, approximately 1,750 trips per day will be made on it by the year 2000 (the number is greater than 1,250 because it is estimated that 500 of the trips will be made by people who only "pass through" the 123-unit area of South Oaks Addition north of the track). If the crossing is not built, all this extra traffic will have to enter and exit the area at one of the three exits onto McMenemy Road north of the track and south of Highway 96.

9. Approximately 75% of the traffic into and out of Vadnais Heights goes to the southwest, in the general direction of the intersection of Rice Street and Interstate Highway 694. This is because the two major business districts in the Twin Cities (downtown Minneapolis and downtown St. Paul), the major shopping centers, and other major destinations in the metropolitan area are most readily accessible to the community from that freeway intersection. Persons traveling to and from Vadnais Heights can also reach Interstate Highway 35-E by driving east along either Highway 96 or County Road E, but these interchanges are much farther north and east from the metropolitan "core

areas" than the Rice-694 interchange. It is assumed that the persons living in the north portion of the South Oaks Addition will follow the same general traffic pattern as the rest of the community, traveling southwest toward the Rice-694 intersection area for access to the rest of the metropolitan area 75% of the time that they use their vehicles.

10. There is no westerly access in or out of the immediate vicinity of the South Oaks Addition, because all of the land to the west is owned by the St. Paul Water Department. That Department does not allow roads to be built on its land, except for the internal use of the Department, in order to protect the Pleasant Lake - Sucker Lake - Lake Vadnais "chain " which serves as a drinking water reservoir for the central city. There is also no access available directly along the north side of the tracks to McMenemy Road because any such road building would infringe on the afore-mentioned wetland protected by the DNR.

11. The Harstad Development Plan includes a ten-acre community and regional park south of the Soo Line track and east of the proposed Foothill Trail. The park is planned as a facility for tennis, football, softball,

picnics and ice skating. If the proposed crossing is not built, and the park and South Oaks Addition are fully developed, persons driving to the park will have to travel over one mile to get to a recreational facility just across the track. It is anticipated that this condition will result in rampant trespassing, especially by children, over the Railroad tracks in order to get to the park quickly.

12. Before development of the South Oaks Addition can proceed, the developer's proposed plat must be approved by the City Planning Commission and City Council, the St. Paul Water Department must approve the sale of and actually sell to the developer an easement across a corner of its property for the north extension of Foothill Road (this is inconsistent with the Water Department policy, but approval is expected so that the water quality in the DNR protected wetland, which flows into Sucker Lake, will not be compromised), Ramsey County must approve access to County Road F on the south, the State Environmental Quality Board must approve the developer's Environmental Assessment Worksheet, and the Minnesota Pollution Control Agency has to approve the sewer extensions. All of these actions are pending, and City Planner William Weber, who has worked on several similar developments in Vadnais Heights, anticipates no problem in obtaining the necessary permits.

13. Harstad, the developer, anticipates construction of the development to commence in the fall of 1985. Although Harstad is in the construction business, most of the building sites north of the track are planned to be sold to other builders for construction and ultimate sale to the house-buying public.

14. Vadnais Heights is a third-tier suburb lying directly north of downtown St. Paul. It has not central business district of its own, but is served by a shopping center at I-694 and Rice Street. The 1970 census listed Vadnais Heights' population at 3,411. The community grew to a population of 5,111 at the time of the 1980 census, and the city currently estimates that 5,800 persons live within its limits. By the year 2005, 3,000 people are expected to live within a one mile radius of the proposed community park described in Finding 11.

15. Proposed Foothill Trail will be 36 feet wide from curb to curb, with a two lane bituminous surface. The speed limit will be 30 miles per hour.

16. Emergency medical services (ambulance) are provided to the City of Vadnais Heights by Health Central-EMS, a company which dispatches vehicles from locations in Roseville (24 hours a day), New Brighton (6:00 a.m.-6:00 p.m.) and Shoreview (10:00 a.m.-2:00 a.m.). During April, 1985, Health Central-EMS vehicles were dispatched to Vadnais Heights on twenty-three

occasions. All but three of these calls were answered by ambulances attached to the Roseville or New Brighton bases, which enter the area from the southwest at 694 and Rice. Any hospital cases are taken out of Vadnais Heights in a southwesterly direction.

17. Police services for the city are performed, on a contract basis, by the Ramsey County Sheriff's Department. The base for the Sheriff's patrols and dispatching of cars on call is located in the southwest quadrant of the 694 - Rice Street intersection.



18. From Rice Street to County Road F (an intersection through which all traffic in or out of this part of Vadnais Heights to or from the southwest must pass), response time for police and emergency vehicles to that portion of the South Oaks Addition north of the Soo Line tracks will be improved by 90 seconds, one way, if the proposed crossing is built.

19. The Vadnais Heights Fire Department is a volunteer organization whose station is located at the City Hall site, 687 East County Road F. The proposed South Oaks Addition is northwest of the fire station. If a southerly access to County Road F is built, crossing the Soo Line tracks as proposed, fire vehicle access to the northern portion of the Addition will improve by 30 seconds.

20. Public school students living north of the Soo Line tracks in Vadnais Heights are in the Mounds View School District. Both elementary and junior high students will be sent to schools lying northeast of the South Oaks Addition (Snail Lake Elementary School and Chippewa Junior High), the route to which will be unaffected by the existence of the proposed crossing. Senior high students, who will be assigned to Mounds View High School, will, however, make the southbound trip, if the crossing is built, due to the shorter distance to the key intersection of Rice Street and County Road F.

21. The crossing of the Soo Line and County Road F is guarded by a flashing signal. The McMenemy Road crossing is guarded by a flashing signal with gates that drop over the right lane of the Road. The parties agree that, if the crossing is ever built, that it should be guarded by flashing signals with gates. They also agree that the surface of the crossing should be bituminous, with treated ties, that the City should pay for installation of the crossing, signals and gates (which installation will be done by railroad personnel), to be reimbursed by the developer, and that railroad personnel will maintain the crossing.

22. At the point of the proposed crossing, the track cuts through a rise in the land which is approximately eight feet on one side of the tracks and six feet on the other. This rise in the land improves the view of oncoming trains by motorists and also improves the view, from a train, of traffic on Foothill Road. If the crossing is approved, the parties agree that the eight foot and six foot "cuts" will be removed, probably by the developer. If the "cuts" are removed, there will be adequate sight line distances for motorists to spot oncoming trains and for train operators to see approaching motor vehicles .

23. Approximately 100 yards northeast of the crossing on County Road F,

the Soo Line has installed a "checker" which monitors wheel temperature and detects any objects dragging on the ground. In order to operate the "checker" properly, a train may not be traveling more than 20 miles an hour.

24. It is likely that southwest-bound trains will be moving at 23 miles an hour or less at the crossing of Foothill Road because of (1) the oncoming presence of the "checker", and (2) the approaching "yard limit" (20 mile per hour maximum speed) boundary for the Railroad's Cardigan junction Yard, which begins 100 yards southwest of the crossing at County Road F.

25. northeast-bound trains are anticipated to be moving no faster than 23 miles per hour (even though the authorized speed limit is 40 miles per hour) when they cross Foothill Road because (1) they have just passed the "checker"

which has a 23 mile per hour speed limit, (2) they have just left the Cardigan Junction Yard area, where the speed limit is 20 miles per hour, and (3) it is difficult to accelerate a loaded train (most of the northeast-bound freights will be loaded).

26. The Soo Line regularly runs six times per day, six days per week, and four times per day, seven days a week (40 trains total) over the pertinent section of track. In addition, extra trains are added as needed (between May 1 and May 27, 1985, 24 extra trains were run). Fifty percent of the trains moved northeast, 50% southwest. The average train at this locale has 85 to 90 cars, which, at approximately 60 feet per car, makes the average train length approximately one mile. The trains crossing this location range in size from two cars to 160 cars.

27. The estimated cost for installation of the crossing is \$16,500. Installation of the proposed flashing signals with gates will cost (approximately) an additional \$70,000.

Based upon the foregoing Findings of Fact, the Administrative Law Judge hereby makes the following:

#### CONCLUSIONS

1. The Commissioner of Transportation has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. Under Minn. Stat. 219.072 (1984) and Minn. Rule 1400.7300, subp. 5, the City of Vadnais Heights has the burden of proving, by a preponderance of the evidence, that a railroad grade crossing should be constructed over the Soo Line track at a point midway between the crossings at County Road F and McMenemy Road; the City has not meet this burden.

4. If it is determined that a grade crossing should be constructed at the location mentioned in the above Conclusion, the crossing should be of bituminous and treated timber material, with flashing signal devices and gates.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE COMMISSIONER OF TRANSPORTATION WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

It is the recommendation of the Administrative Law Judge to the Board that it issue the following:

ORDER

IT IS HEREBY ORDERED that the Petition of the City of Vadnais Heights for construction of a public grade crossing over the main line of the Soo Line Railroad Company between County Road F and McMenemy Road in Vadnais Heights, Minnesota be and hereby is DENIED;

OR, IN THE ALTERNATIVE, if the Commissioner of Transportation determines that an establishment of need has been made at the location in question;

IT IS HEREBY ORDERED that the Petition of the City of Vadnais Heights for establishment of a public grade crossing over the main line of the Soo Line Railroad Company between County Road F and McMenemy Road in Vadnais Heights, Minnesota be and hereby is GRANTED, and that said crossing shall be a bituminous crossing, with treated timber, guarded by flashing signals and gates, to be constructed perpendicular to the track after removal of the small hills obstructing sight lines along the side of the track, and in compliance with all applicable statutes and rules .

Dated this 19th day of July, 1985.

RICHARD C. LUIS  
Administrative Law Judge

#### NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded (four tapes)

#### MEMORANDUM

Minn. Stat. 219.072 (1984), reads:

Establishment of new grade crossings. The establishment of all new grade crossings shall be approved by the commissioner. When it is desired, either by the public officials having the necessary authority or by the railroad company, to establish a new grade crossing and an agreement cannot be reached between the public officials and the railroad, either as to need or location, or type of warning devices required, either party may file a petition with the commissioner setting forth the facts and submitting the matter for determination. The commissioner, after notice as he shall deem reasonable, shall conduct a hearing and issue his order determining the matters so submitted.



The Administrative Law Judge recommends against ordering the establishment of a grade crossing at the location in question because he is not persuaded of the need for such a crossing. The Judge is of the opinion that the Harstad development is in the formative, embryonic stage and that to upgrade its present progress by ordering the construction of a grade crossing would be an exercise in premature speculation.

The site is completely undeveloped at this point. As noted in Finding 12, several permits from different governmental bodies must be issued before the construction can begin. In addition, the record contains no evidence establishing how many of the lots will be sold, and when, if the proposed development gains final approval from all appropriate agencies. Nor is there any adequate evidence establishing how the initial construction will be funded.

Even if the portion of South Oaks Addition north of the tracks (the area whose access most improves if the crossing is built) "grows Lip" to a population of 370 by 2005, the benefits of a grade crossing on the area's main street, Foothill Drive, are questionable. Police and ambulance access will improve by 90 seconds - but no adequate evidence is on the record to establish the relative importance of cutting off response time of police and ambulance service by a minute and a half. Absent such an establishment, the Administrative Law Judge is unable to assign the 90-second improvement in services any significant weight. The response time for fire equipment will improve by only 30 seconds. The Administrative Law Judge is not persuaded that a 30-second difference in responding to a fire is significant - absent expert or scientific evidence as to that significance.

The City's witness on the subject of anticipated traffic flow (Mr. Heppelmann) admitted that his estimates had "lots of room for error" because it is hard to tell where and when development will actually occur in the South Oaks Addition. The Administrative Law Judge is unable to assign a great deal of weight to his estimates that 1,250 trips per day will generate from the portion of the Addition north of the track. His estimates of increased traffic onto McMenemy Road from the west suffer from the same infirmities. The "magnet" park just south of the track from the South Oak Addition is also still a reality on paper only.

On the other hand, the Soo Line has a genuine concern to be weighed against all of the City's evidence - that the opening of an at-grade crossing creates a great hazard in and of itself. The Railroad's witness, Superintendent Ronald Hansen, testified that motorists and pedestrians often ignore dropped gates and flashing lights and attempt to cross the tracks anyway, and that injuries can and do result. The Administrative Law Judge finds such evidence to be credible. Such a hazard should not be created

unless it is evident that a need exists to build a crossing. And, for the reasons stated above, the Administrative Law Judge is unconvinced that a present need exists, and has not been persuaded that such a need will exist in the future.

R.C.L.